

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.600 OF 1995

WITH

SPECIAL CIVIL APPLICATION NO.13591 OF 1994

WITH

SPECIAL CIVIL APPLICATION NO.13645/94, 13691/94,
804/95, 805/95, 865/95, 1372/95, & 2226/95

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed
to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy
of the judgment ?
 4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950, or any order made
thereunder ?
 5. Whether it is to be circulated to the Civil
Judge?

GUJARAT RAJYA JAHER BANDHKAAM MAJOOR MANDAL
VERSUS
STATE OF GUJARAT & ORS.

Appearance: (In all SCAs)

MR MUKUL SINHA, MR AM PATEL, MR RH PATHAK,
& MRS. DT SHAH, for Petitioners

MR SN SHELAT, Addl. Adv. General, with
MR SR DIVETIA, AGP, for Respondents

Coram: S.K. Keshote,J
Date of decision:16/07/1997

C.A.V. JUDGMENT

#. Heard learned counsel for the parties.

#. In all these Special Civil Applications, a common question of fact and law is being raised by petitioners' counsel, and as such, the same are being decided by this common order. Leading arguments in these matters have been advanced on behalf of the petitioners by Mr.Mukul Sinha, learned counsel for the petitioners in Special Civil Application No.600 of 1995 and the other counsel for petitioners in cognate matters have adopted these arguments.

#. Special Civil Application No.600 of 1995 has been filed by the Gujarat Rajya Jaher Bandhkam Majoor Mandal. The facts of the case in brief are that the members of the petitioner in Special Civil Application No.600 of 1995 and the petitioners in other Special Civil Applications were appointed on daily wages by the Government for carrying out different activities in the areas of Public Works. Till 1988 different categories of workmen employed in the Public Works Department had no service conditions laid down by any rule or executive instructions. The workmen all over the Gujarat, in the year 1986-87 had resorted to sustained struggle to reduce the burden of exploitation at the hands of the very State which had promised the citizens freedom and equality at the dawn of Independence. The petitioners submitted that as a result of struggle, the Government did wake up and a Committee headed by the then Minister of Roads & Buildings, was set up in the month of March 1988. The said Committee gave its report to the Government which came to be accepted and on that basis, three Government Resolutions for the unskilled, semi-skilled and skilled workmen respectively came into force. These Resolutions are dated 17th October 1988. Copies of these Resolutions have been submitted by the petitioners as annexures 1, 2 and 3 respectively to Special Civil Application No.600 of 1995. Further categorization has been made in three categories, with reference to length of service. All the three categories of workmen, who have less than five years' service had been paid minimum wages and after 240 days, Sunday as a paid off and medical allowance. In the

second category, those workmen who have more than five years but less than ten years' service were provided fixed basic of Rs.750/-, Government DA, Sunday as paid off, all public holidays and 14 CL, GPF and medical allowance. In the third category, the unskilled and skilled workmen who have completed more than ten years' service were to be considered as permanent and to be placed in scale of 750-940 or skilled grade, DA, HRA, CCA, medical, leave, age of retirement, and pension at par with regular Government employees was provided. Moreover, semi skilled workmen having more than 15 years' service were given aforesaid benefits.

#. All the petitioners, including the Association were satisfied with the aforesaid Government decisions. The aforesaid Government decisions were implemented. Further doubts raised from time to time by the officers in implementation of these Resolutions, were explained by the Government and certain further Resolutions have been made, with which we are presently not concerned.

#. The grievance started from the date from which the Government brought out the impugned Government Resolution dated 18th July 1994, under which the status of permanency granted by the original Government Resolution dated 17th October 1988 was cancelled and all workmen, irrespective of their length of services and inspite of Government Resolution being in operation, have been reduced to daily wage workmen and they have been brought under the nominal muster roll and were required to give an undertaking that they accept their designation as daily wage workers and they were required to wear the badge of the daily wage worker.

#. These petitions pertain to two departments, namely, Roads & Building, and Narmada and Water Resources, and as such two separate Resolutions have been passed for these two departments, but identical in all respect. All the workmen who were in employment as on 1.10.88 have been paid interim relief in the month of October 1994, effective from 1.1.94, but said payment was stopped from the month of December 1994. The Government has issued a Circular dated 11.1.95 to all the head of Departments directing them that the workmen who are daily wagers are not entitled to interim relief. So, irrespective of the length of service, the workmen have been deprived of interim relief and it has been given out in Special Civil Application No.600 of 1995 that the Government has decided to recover the amount of interim relief already paid from the salary of the workmen from the month of January 1995. So challenging the Resolution dated 18th

July 1994, and the Circular of the Government dated 11.1.95 declining interim relief to this class of petitioners, these petitions have been filed before this Court.

#. Under the Resolution dated 16th August 1984, a decision was taken by the Government regarding payment of interim relief to its employees with effect from December 1993. However, as stated earlier, this benefit was given to the class of employees, who are the petitioners in these petitions, from 1.1.94. The prayer has been made for grant of interim relief in these matters regarding interim relief to be continued to be paid to them in terms of Resolution dated 16th August 1994. The learned Single Judge of this Court, by order dated 23rd February 1995, directed that an amount of Rs.100/- p.m. be paid to the members of the Union as interim relief during the pendency of the writ petitions. This interim order has been challenged by the Government by filing L.P.A. which was dismissed on April 4, 1995. Then the matter has been taken by the State of Gujarat to the Hon'ble Supreme Court by filing S.L.P. Leave was granted and Civil Appeal No.7724 of 1995 has been decided by the Hon'ble Supreme Court on 25.8.95. Interim order granted in these matters by this Court was ordered to be modified as follows:

(i) The interim relief at the rate of Rs.100/- per month on the basis of the interim order passed by the High Court shall be paid upto August 31, 1995. Thereafter, no payment shall be made during the pendency of the writ petitions.

(ii) Some of the members of the respondent Union who were entitled on the basis of the aforesaid interim order of the High Court but who have not yet received the same shall be paid upto August 31, 1995.

#. So, that from 1st September 1995, none of the petitioners in other petitions and the members of the petitioner in Special Civil Application No.600 of 1995 are getting the interim relief. The Special Civil Applications have been contested by the respondents by filing reply to the same.

#. The learned counsel for the petitioners raised manifold contentions challenging the legality, propriety and correctness of the Resolution of the Government dated

18th July 1994 and the Circular dated 11th January 1995, but I do not consider it necessary to advert to all those contentions except one, which according to me is sufficient to allow these Special Civil Applications. One of the contentions raised in these Special Civil Applications is that the Resolution dated 18th July 1994 and the Circular dated 11th January 1995 have been passed by respondents without giving any notice or opportunity of hearing to the affected persons including the Union. The learned counsel for the respondents Shri S.N.Shelat, Additional Advocate General of the State, submitted that on merits, the petitioners have not case. However, he very fairly conceded that the impugned Resolution and the Circular were made without giving a notice or opportunity of hearing to the affected persons.

##. The Resolutions dated 17th October 1988 came to be passed as a result of number of representations made to the Government by the Gujarat State Employees' Federation, Gujarat State Public Works Department Labourers' Association and various other Unions in relation to long pending demands and question of daily wagers working under different departments of the State Government. The Government has examined and considered the demands made in such representations and the question of daily wage workers. After carefully examining and considering these demands and other questions of labour Associations, a Committee was constituted by the Government. This Committee was headed by the then Minister of Roads and Buildings Department. The Committee has handed over its report to the Government after careful consideration and examination of wages and other service facilities in respect of daily wage labourers and workmen engaged at various Departments of the State, mainly, Roads & Building Department, Water Resources Department, Forest Department, Agriculture Department, Narmada Development Department etc. From the Resolution of the Government dated 17th October 1988, it further comes out that the report submitted by the Committee has been taken into consideration by the Government and it has decided to accept the recommendations of the Committee. The Government, under the aforesaid Resolutions decided to grant wages and service facilities to the daily wagers, unskilled, semi skilled and skilled workmen in various Departments of the State. Reference here has to be made to the Resolution of the Government dated 3rd November 1990. That Resolution was under the head, "Implementing the recommendations of Committee constituted under the Chairmanship of the Hon'ble Ex-Minister Shri Daulatbhai Parmar, of Roads and Building Department, for demands of

the labour Association". Under this Resolution, the Government had granted the benefits and status which were provided under the Government Resolutions dated 17th October 1988. So, the Resolutions of October 17, 1988 were not immediately given effect to and the Government has taken time to implement them and the same came to be implemented under the Resolution dated 3rd November 1990. Under the impugned Resolution dated 18th July 1994, the Resolution dated 3rd November 1990 was cancelled and instructions were issued inter alia that the workmen will be treated as daily wagers. The learned counsel for the petitioners submitted that though the benefits which have been conferred to the daily wagers under the Resolutions dated 17th October 1988 read with Resolution dated 3rd November 1990 were not taken away under the impugned Resolution, except it resulted in deprivation of interim relief, and the status of permanency which has been conferred to the daily wagers and the workmen were still treated as daily wage workmen. What the learned counsel for the petitioners contended that once a status has been conferred which had its own consequences and results, under the impugned Resolution that status has been taken away which may result in manifold losses or deprivation of benefits in future in addition to what presently has been deprived of. By treating these workmen to be daily wagers a Resolution of the Government dated 16th August 1994 has been made inapplicable for this class of persons. Under the Resolution of the Government dated 16th August 1994, as stated earlier, interim relief of Rs.100/- was given by the Government to its employees. Under the impugned Circular dated 11th January 1995, under the subject, "clarification regarding grant of benefit of interim relief to daily wager workmen", it has been stated with regard to aforesaid subject that the interim relief as declared by Finance Department vide Resolution No.PGR-1194-44 dated 16th August 1994, is not liable to be granted to the daily wager workmen. The learned counsel for the petitioners contended that though this benefit was extended even to workcharged employees and to the employees of private non government aided institutions, the same has been taken away only from this class of employees under the pretext that under the impugned Resolution dated 18th July 1994, they have been given status of daily wage workmen.

##. However, I do not consider it appropriate to go on the merits of the matter as I am of the opinion that before passing the Resolution dated 18th July 1994, as well as Circular dated 11th January 1995, the respondents should have given an opportunity of hearing to all the concerned, i.e. the Federation and other Associations on

whose representations ultimately, the Committee has been constituted and Resolutions dated 17th October 1988 and 3rd November 1990 have been passed by the Government. Under the Circular dated 11th January 1995, monetary benefits which the members of petitioner in Special Civil Application No.600 of 1995 and petitioners in other Special Civil Applications were recipients, has been taken away. It is a monetary loss to them and as such, before making any such order, principle of natural justice has to be followed. Similarly, I find substance in the grievance of the petitioners' counsel that the change of status from permanency to that of daily wager workman may have serious repercussions in future and this point needs consideration. When after deliberations in past, regarding demands of daily wager workmen, the Government has decided to constitute a Committee and recommendations made by it have been accepted, then before making any change in those Resolutions in the form of modifications or further before taking away the benefits which have been conferred to them, the same course should have been adopted and the affected persons, i.e. Federation, and other Associations of the employees should have been heard, which precisely has not been done. Otherwise also, this matter pertains to a large number of employees and the respondent-State is the employer, and as such, this matter should have been dealt with and decided sitting around the table to have an industrial peace amongst its own employees. Discontentment among the employees because of some Resolutions passed by the Government or due to discontinuation of some benefits may result adversely, and may affect the efficiency, zeal and interest in working of the employees. In such matters, it is always advisable that consensus of the Federations and other Association is taken by the Government so that the controversy of the nature which has been raised in these petitions does not arise. Once a consensus decision is taken then naturally the members of the Federation and other Unions would have been satisfied and it would have been in the larger interest of both, employees and State, and ultimately this avoidable litigation could have been avoided.

##. However, in view of the fact that from 1st September 1995, the members of the petitioner-Association in Special Civil Application No.600 of 1995 and the petitioners in other Special Civil Applications are not getting interim relief, I do not consider to be a fit case where that benefit should be ordered to be continued to this class of persons pending the decision in these matters by the Government. The learned counsel for the

petitioners has contended that those Resolutions should be set aside, but that course I do not consider it to be taken as since last about two years, they are not receiving the benefits, as per the order of Hon'ble Supreme Court. It is a matter of hardly three to four months within which the respondents will decide the matter and till then, if these benefits are not given to this class of persons, they will not suffer any irreparable loss.

##. In the result, these Special Civil Applications are disposed of in terms that the Resolution dated 18th July 1994 and the Circular dated 11th January 1995 should be taken to be only proposed decisions to be taken in the matter by the respondents. All the concerned Federations, Unions and Associations may be given a notice and opportunity of hearing in these matters and after hearing them, a final decision may be taken. In case ultimately, the Government decides that these workmen are also entitled for interim relief, the arrears of the same payable to this class of employees should be determined and the same should be paid to them forthwith. In case the Government decides not to grant these benefits to this class of persons as well as decides to continue the status of these workmen as daily wagers, then a reasoned order may be passed and a copy of the same may be given to the concerned Federations, Unions and Associations of the employees. In that eventuality, the Federations, Unions and Associations shall be at liberty to raise industrial dispute in the matter which is the only appropriate remedy available to them. However, it is made clear that till this matter is decided finally by the respondents, no recovery should be made from any of the affected class of employees of the amount of interim relief already paid to them. The respondents are directed to decide this matter within a period of four months from the date of receipt of certified copy of this order. In case the matter is decided in favour of these employees, then within three months thereof, the calculation of the arrears of the amount payable to them shall be made and the amount of arrears be paid to them within a period of one month thereafter.

##. All the Special Civil Applications and Rule therein stand disposed of in aforesaid terms. No order as to costs.

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